**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 692 OF 1993**

1. Executive Engineer (Working ]
   Section), Sindhudurg ]
   Zilla Parishad, At Kankavali]
   Dist : Sindhudurg ]
2. Chief Executive Officer, ]
   Zilla Parishad, Sindhudurg ]
   At Post-Kudal, Taluka Kudal]
   District Sindhudurg ]..Appellants

versus

1. Sherif Mohammad I. Shaikh ]
2. The Collector, Sindhudurg ]
   At Post Kudal, District ]
   Sindhudurg ]..Respondents

Mr. R. D. Soni for the Appellants.

Mr. H.S.S. Murthy, appointed as amicus curiae for the Respondents.

**CORAM : D. G. DESHPANDE,J.**

**DATE : 6TH MAY,2005**

**ORAL JUDGMENT :**

1. Heard Mr. Soni learned counsel for the

appellants. Nobody was appearing for the respondents even though the respondents were served. However, looking to the submissions made by Mr. Soni and the crucial question involved, Mr. Murthy, Advocate, was appointed as amicus curiae to assist the court because the decision on the issues involved were going to have wider implications, therefore I heard Mr. Murthy.

2. Appellants are the original defendants. Suit came to be filed by the respondents against the appellants for recovering sum of Rs.58,000/- and odd, that was in respect of the work done by the respondents pursuant to the tender submitted by them and work done by them. Before filing the suit the original plaintiff gave a notice under Section 280 of The Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (hereinafter referred to as "the Act of 1961"). This notice Exhibit 40 was dated 10.10.1990 and since the appellants did not make any amends, a suit came to be filed on 25.9.1991. The Defendants - Appellants raised contention before the trial court that the suit was barred by limitation and that contention was rejected by the lower court and on merits the suit was decreed, therefore this Appeal.

3. Appellants raised only one question, viz.

the suit being barred by limitation should have been dismissed. His submissions are based on following legal provisions. Section 280 of the Act of 1961 lays down that before any suit is filed against the Zilla Parishad, the proposed plaintiff will have to give statutory notice to the Zilla Parishad as provided by Section 280. Giving of such a notice is mandatory and no suit can be instituted without giving notice. Section 280 further requires that one month's notice should be given in writing of the intended suit and the suit has to be filed within three months from the date of the act complained of. This will be clear from Section 280 itself, which reads as under:

> *"280. (1) No suit shall be commenced against any Zilla Parishad or against any officer or servant of, or working under, a Zilla Parishad or any person acting under the orders of a Zilla Parishad or Panchayat Samiti for anything done, or purporting to have been done, in pursuance of this Act, without giving to such Zilla Parishad officer, servant, or person one month's previous notice in writing of the intended suit nor after three months from the date of the act complained of. The notice shall state the cause of action, the nature of the*

*relief sought, the amount of compensation claimed and the name of place of abode of the person who intends to bring the action.*

*(2) In the case of any such suit for damages, if tender of sufficient amends shall have been made before the action was brought, the plaintiff shall not recover more than the amount so tendered, and shall pay all costs incurred by the defendant after such tender*."

4. Now in this case the plaintiffs have completed the work assigned to him between 3.5.1990 to 10.5.1990. Therefore, his cause of action for filing the suit for recovery of the amount of the work done started from 10.5.1990. He was required to give one month's notice under Section 280 of the Act of 1961 and suit should have been filed within three months from the date of the act complained of. Notice is given on 10.10.1990 and the suit is filed on 25.9.1990 and therefore in view of the aforesaid facts, the appellants raised plea of limitation before the trial court. The same plea is raised here in Court by Mr. Soni. According to him, if cause of action for recovering the amount occurred between 3.5.1990 to 10.5.1990 then the suit should have been filed within three months or at any rate within three months of giving of notice under

Section 280 i.e. on or before 10.1.1991. But admittedly the plaintiffs filed a suit on 25.9.1991 and therefore the suit was barred by limitation.

5. Mr. Soni contended rejection of objection by the trial court on the ground that non payment of the dues is a continuous cause of action and therefore not filing of the suit within three months, at all could not affect the maintainability of the suit, was wrong and perverse.

6. Mr. Soni also contended that the Act of 1961 was a special statute and when this Act has provided specific limitation for the suits against the Zilla Parishad then the limitation provided under the Limitation Act, was not at all applicable. Mr. Soni also relied upon the following Authorities:

(i) 1980 Kerala 82
(ii) 1976 Calcutta 209
(iii) 1958 Allahabad 311
(iv) 1957 Andhra Pradesh 98
(v) 1974 Supreme Court 480
(vi) 1995 Supreme Court 2272

7. As against this, Mr. Murthy contended that the claim of the plaintiffs was arising out of contract between himself and Zilla Parishad and such

claims were not covered nor affected by Section 280. Secondly, he contended that Section 280 did not and was not aimed at being a full Code in itself to substitute or to take place of the entire Limitation Act and particularly all Articles of the Limitation Act prescribe for different limitation for different causes of action.

8. Mr. Murthy next contended that if the contractor does not get money as agreed between the parties or pursuant to the contract then as held by the Supreme Court in **AIR 1975 Supreme Court 763 Bombay Housing Board vs. M/s. Karbhase Naik & Co. Sholapur** non payment of money as damages for breach of contract was not an act done or purported to have been done in pursuance of that, and therefore the limitation prescribed by Section 280, was not at all applicable. Mr. Murthy also relied upon the judgment of this Court reported in **1993 Mh.L.J. 1392 Deoram Tulshiram Patil vs. Zilla Parishad, Nasik and others**, in support of his contention that non payment of undisputed claim for actual work done on the basis that contract cannot be said to be *"anything done or purporting to have been done in pursuance of this Act"* as contemplated under Section 280 of the Act.

9. Mr. Murthy, further contended that the

judgments relied upon by Mr. Soni did not and could not apply to the facts of the case or the issue involved and therefore the claim and contention of the appellants that the suit was barred by limitation, was required to be rejected, as was done by the trial court.

10. At this juncture, it is necessary to consider the cases relied upon by Mr. Soni. The first judgment relied upon by Mr. Soni was **AIR 1980 Kerala 82 State of Kerala and Anr. vs. Ayilammal Syamala Thamburatti and others**. The appeal before the Kerala High Court was under Section 8A of the Kerala Private Forests (Vesting and Assignment) Act 1971 from the decision of the Forest Tribunal, Palghat under Section 8. Section 8 provided an appeal against that order and also prescribed period of 60 days for the appellant. If the time spent for obtaining certified copy was excluded the appeal before the Kerala High Court was within time otherwise it was barred by limitation. Therefore, question was whether Section 12 of the Limitation Act, was applicable. The Kerala High Court, firstly, came to the conclusion that Sections 4 to 24 (inclusive) of the Limitation Act, 1963, shall, to the extent to which these provisions have not been expressly excluded by a special or local law, apply for the purpose of determining any period of limitation prescribed by any suit, appeal or

application by such special or local law. There the High Court found that in the Private Forest Act, referred to above, there was no provision which specifically excluded any of the provisions of Sections 4 to 24 and therefore period for appeal was 60 days. The court also came to the conclusion that Section 12 of the Limitation Act applied and therefore the time required for obtaining a certified copy was to be excluded.

11. Second Judgment relied upon by Mr. Soni is **1976 Calcutta 209 Union of India vs. Shri Vijay Chemical & Celluloid Works Ltd. and Anr.** In that case the question was of limitation to file appeal under Section 39(1)(vi) of Arbitration Act, 1940. Section 39(1) does not provide for any period of limitation for such an appeal. Appeal was maintainable under Section 8 of the Calcutta City Civil Courts Act and therefore the question was whether the Civil Court was repugnant to the Article 116 of the Limitation Act. The Calcutta High Court held that there was no conflict nor inconsistency between two provisions but the period of limitation for appeal is 30 days and not 90 days.

12. Mr. Soni also relied upon the judgment of Allahabad High Court report in **AIR 1958 Allahabad 311 Chandra Pal vs. Board of Revenue U.P and**

**others.** The question there was of limitation as provided by Sections 29, 3 and 6 and sub section (2) of the Limitation Act. As against the provisions of the U.P. Tenancy Act. There in paragraph 2 the Court has stated that the U.P. Tenancy Act is a special or local law lying down its own period of limitation for the suits brought under it. Under Section 29 of the Limitation Act, section 3 of the Limitation Act would apply to any suit under the U. P. Tenancy Act, but section 6 will not apply unless it was made applicable. The U.P. Tenancy Act has not made section 6 applicable to a suit brought under it. In this background, the High Court found that there was no conflict and therefore exception contained in Section 6 could not be availed of in a suit under the U. P. Tenancy Act.

13. Mr. Soni also relied upon the judgment of Supreme Court reported in **1974 Supreme Court 480 Hukumdev Narain Yadav vs. Lalit Narain Mishra.** The questions before the Supreme Court were as under:

> *(1) Is the Court closed on Saturday, when the Judges do not sit for the purposes either of S. 10 of the General Clauses Act, or S. 4 of the Limitation Act?*
>
> *(2) By virtue of S. 29(2) of the Limitation*

*Act, are the provisions of SS. 4 to 24 of the said Act applicable to election petitions?*

*(3) If they are, and S. 5 of the Limitation Act is applicable, do the facts of the case warrant condonation of delay?*

However, while dealing with these questions, the Supreme Court in paragraph 11 has stated, *"It will be noticed that under the 1908 Act there are two limbs - (1) that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the First Schedule, the provisions of Section 3 shall apply, as if such period were prescribed therefor in that Schedule; and (2) for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Section 4, Sections 9 to 18 and Section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such appeal or local law .."* Further in paragraph 17, the Supreme Court has observed *"...but what we have to see is whether the scheme of the special law, that is, in this case the Act, and the nature of the remedy provided therein are such that the*

*Legislature intended it to be a complete code by itself which alone should govern the several matters provided by it."* This criteria, in my opinion, is the deciding factor in this appeal, and, therefore other judgments relied upon by Mr. Soni, are not required to be considered.

14. If this criteria is applied, then it has to be held that Section 280 of the Act of 1961 is not a complete code in itself. Zilla Parishads and Panchayat Samities have to do various duties, as such they will have to enter into various agreements for enforcement of the Act, they will be incurring liability and will also be entitled to different claims against different persons and for limitation in respect of several and innumerable causes of action. Section 280 is not a code in itself and therefore Section 280 does not exclude or supercede the provisions of Limitation Act.

15. Secondly, words used in Section 280 are very peculiar. What it states is that *"No suit shall be commenced ..... anything done ..... and notice shall state the cause of action, the nature of the relief sought, the amount of compensation claimed...."* In sub section (2) it is provided that *"In the case of any such suit for damages, if tender of sufficient amends shall have*

*been made before the action was brought, the plaintiff shall not recover more than the amount so tendered."* Therefore, it appears that object beyond Section 280 was to give notice to the Zilla Parishad or its Officers if at all the claim for any damages and/or for compensation. Admittedly, in this case the claim of the respondent was in respect of work done by him under a contract.

16. Mr. Murthy rightly relied upon the judgment of Supreme Court reported in **AIR 1975 Supreme Court 763 Bombay Housing Board (now the Maharashtra Housing Board) vs. M/s. Karbhase Naik and Co., Sholapur,** wherein the suit was about non payment of money as damages for breach of contract and it was held that *"..the act of non payment of the amount alleged to be due to the contractor could be said to have been done or purported to have been done in pursuance of the Act.."* Mr. Murthy also relied upon another judgment of this court reported in **1993 Mh.L.J. 1392 Deoram Tulshiram Patil vs. Zilla Parishad, Nasik and others,** wherein clearly it is held that non payment of undisputed claim for actual work done on basis of contract could not be said to be "anything done or purporting to have been done in pursuance of the Act."

17. Therefore, in view of these two judgments,

contention of Mr. Soni that the suit was liable to be dismissed on the ground of limitation, is required to be rejected.

18. Before concluding, a note of appreciation is required to be given to Mr. Murthy for having assisted the court in this matter as an amicus curiae.

19. In the result, I pass the following order:

**ORDER**

. Appeal is dismissed.

. In the circumstances there is no order as to costs.

6.05.2005 (D.G. DESHPANDE, J.)